

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

BONNY SUE HATHAWAY,

Defendant and Appellant.

E053374

(Super.Ct.No. FWV1000437)

OPINION

APPEAL from the Superior Court of San Bernardino County. Bridgid M. McCann, Judge. Affirmed.

Susan S. Bauguess, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Defendant and appellant Bonny Sue Hathaway pled guilty to petty theft with a prior conviction. (Pen. Code, § 666.)¹ She also admitted that she had served one prior prison term. (§ 667.5, subd. (b).) She was placed on probation for a term of 36 months and was ordered to participate in drug court. A petition to revoke probation was subsequently filed alleging defendant's failure to participate in drug court. Defendant failed to appear at the hearing, and a bench warrant was issued. Defendant subsequently appeared in custody and admitted the violation. She was ordered to remain in custody for one week, at which time she would return to drug court and be reinstated on probation. Defendant failed to appear at the next scheduled hearing, and her probation was revoked. She later appeared in custody and admitted that she violated probation again by failing to appear at the drug court review. The court reinstated her on probation again, but modified her probation terms to delete the drug court requirement; instead, she was required to serve 365 days in county jail. Defendant was ordered to surrender, but she failed to appear. The court revoked her probation. Approximately two months later, defendant appeared in custody and admitted a violation of probation. The court terminated her probation and sentenced her to the low term of one year four months, plus one year on the prison prior, for a total state prison sentence of two years four months. She was awarded 176 days of presentence custody credits.

¹ All further statutory references will be to the Penal Code, unless otherwise noted.

Defendant filed a notice of appeal. She subsequently filed a writ of habeas corpus (case No. E054273), which this court granted.² We affirm.

FACTUAL BACKGROUND

Defendant was charged with, and pled guilty to, taking and carrying away the personal property of Kmart.

ANALYSIS

Defendant appealed and, upon her request, this court appointed counsel to represent her. Counsel has filed a brief under the authority of *People v. Wende* (1979) 25 Cal.3d 436 and *Anders v. California* (1967) 386 U.S. 738 [87 S.Ct. 1396, 18 L.Ed.2d 493] setting forth a statement of the case and two potential arguable issues: 1) whether there was a knowing and voluntary admission to the probation violation; and 2) whether the decision in defendant's habeas petition in case no. E054273 renders her appeal moot. Counsel has also requested this court to undertake a review of the entire record.

We offered defendant an opportunity to file a personal supplemental brief, which she has not done. Pursuant to the mandate of *People v. Kelly* (2006) 40 Cal.4th 106, we have conducted an independent review of the record and find no arguable issues.

² The issue in case No. E054273 was whether an amendment to section 666, effective September 9, 2010, was applicable to defendant's case. The amendment provided that, under most circumstances, a felony conviction for petty theft with a prior required the People to plead and prove three or more prior theft crimes, rather than just one. The court had suspended imposition of defendant's sentence and, by the time it sentenced her, the amended version of section 666 had become effective. We agreed that the court should have imposed sentence pursuant to the amended statute. We note that section 666 has since been amended again, effective October 1, 2011.

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

HOLLENHORST
Acting P. J.

We concur:

KING
J.

CODRINGTON
J.